

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

GRACE VAUGHN,

Case No. 3:16cv00248

Plaintiff,

Judge Thomas M. Rose

v.

COMMON PLEAS COURT OF
MONTGOMERY COUNTY,

Defendant.

**ENTRY AND ORDER OVERRULING OBJECTIONS (DOC. 5); ADOPTING
REPORT AND RECOMMENDATIONS (DOC. 4) AND DISMISSING COMPLAINT
PURSUANT TO 28 U.S.C. § 1915(e)(2) (DOC. 2)**

This case is before the Court on the Objections (Doc. 5) filed by pro se Plaintiff Grace Vaughn (“Plaintiff”) to the Report and Recommendations (“Report”) (Doc. 4). In the Report, Chief Magistrate Judge Sharon L. Ovington, upon an initial review pursuant to 28 U.S.C. § 1915(e)(2), recommended that Plaintiff’s Complaint (Doc. 2) be dismissed.

As required by 28 U.S.C. § 636(b) and Federal Rule of Civil Procedure 72(b), the Court has made a *de novo* review of the record in this case. As the Chief Magistrate Judge stated in the Report, the Montgomery County Court of Common Pleas is not a “person” under § 1983 and therefore lacks the capacity to be sued. *Evans v. Cordray*, No. 2:09-CV-587, 2012 WL 1021698, at *3 (S.D. Ohio Mar. 26, 2012) (“[I]t is not proper to make a court a defendant. Courts are not persons within the meaning of 42 U.S.C. § 1983.”). In addition, Plaintiff’s claims assert a violation of a constitutional right that did not exist in 1975 when her application for a marriage license was denied. The constitutional right she now seeks to vindicate was not recognized until 2015. *Obergefell v. Hodges*, ___U.S. ___, 135 S.Ct. 2584 (2015). “The doctrine of qualified

immunity protects government officials from liability for civil damages insofar as their conduct does not violate clearly established statutory and constitutional rights of which a reasonable person would have known.” *Pearson v. Callahan*, 555 U.S. 223, 231 (2009) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)).

The Court therefore finds that Defendant’s Objections (Doc. 5) to the Report (Doc. 4) are not well taken and they are hereby **OVERRULED**. The Court **ADOPTS** the Report (Doc. 4) in its entirety and rules as follows:

- Plaintiff’s Complaint is **DISMISSED** pursuant to 28 U.S.C. § 1915(e)(2);
- The Court **CERTIFIES** under 28 U.S.C. § 1915(a)(3) that Plaintiff’s appeal, if any, would not be taken in good faith; and
- The case is **TERMINATED** on the docket of this Court.

DONE and **ORDERED** in Dayton, Ohio, this Friday, October 21, 2016.

s/Thomas M. Rose

THOMAS M. ROSE
UNITED STATES DISTRICT JUDGE